

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF OKLAHOMA**

JONATHAN DALE MCCARTY,)	
)	
Petitioner,)	
)	
v.)	Case No. CIV-22-330-J
)	
SCOTT NUNN,)	
)	
Respondent.)	

ORDER

Petitioner, a state prisoner appearing pro se, filed a petition for writ of habeas corpus under 28 U.S.C. § 2254. [Doc. No. 1]. The matter was referred for initial proceedings to United States Magistrate Judge Gary M. Purcell consistent with 28 U.S.C. § 636(b)(1)(B), (C) and upon screening Judge Purcell recommended the petition be dismissed with prejudice because it was not timely filed. [Doc. No. 13]. Despite being cautioned that he must file any objection no later than July 20, 2022, *see id.*, Petitioner did not object and has waived his right to appellate review of the factual and legal issues addressed in the Report and Recommendation. *See Cassanova v. Ulibarri*, 595 F.3d 1120, 1123 (10th Cir. 2010).

Accordingly, the Court ADOPTS the Report and Recommendation [Doc. No. 13] and DISMISSES with prejudice the petition for writ of habeas corpus [Doc. No. 1].

Pursuant to Rule 11(a) of the Rules Governing Section 2254 Cases, the Court must issue or deny a certificate of appealability (COA) when it enters a final order adverse to a petitioner. A COA may issue only if the petitioner “has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). “A petitioner satisfies this standard by demonstrating that jurists of reason could disagree with the district court’s resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve

encouragement to proceed further.” *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003). Petitioner has failed to make either showing and the Court denies the COA.

A separate judgment shall be entered.

IT IS SO ORDERED this 19th day of August, 2022.



BERNARD M. JONES
UNITED STATES DISTRICT JUDGE